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In re Application of
Lars Abrahmsen et al
Serial No.: 08/765,695
Filed: July 25, 1997
Attorney Docket No.: P01525US0

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: PETITION DECISION
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This is in response to applicants' renewed petition under 37 CFR 1.144, filed December 18, 2000, seeking reversal of the previous petition decision, mailed November 29, 2000.

The file history is recited in the previous petition. Since the petition decision, a reply to the Office action mailed July 3, 2000, has been correlated with the file and this petition has been filed.

DISCUSSION

In the renewed petition applicants argue that they did argue that the examiner's holding that the conjugate as well as the method of using the conjugate do not avoid the prior art. This is technically correct. However, the restriction was based on the claims as originally presented prior to the first action on the merits. Based on the International Preliminary Examination Report, neither group of claims avoided the prior art. In view of this initial determination the examiner held Lack of Unity between the conjugate and method of using the conjugate. Note Annex B, part (c)(iii), which states that an initial holding of Unity made before a search of the prior art, and based on the assumption that the claims avoid the prior art, may be reconsidered on the basis of the results of the prior art search. It is clear that in the International application Unity of Invention was held prior to the prior art search. Following preliminary examination it was determined that all claims were taught by the prior art. On this basis Unity of Invention was reviewed and a Lack of Unity found. Although applicants argue that the claims now avoid the prior art, no such determination has been made by the examiner and the examiner's authority to make such determination will not be disturbed by this petition decision. The last Office action on the merits (August 16, 1999) does not indicate any claims as allowable over the applied prior art. Thus the holding of Lack of Unity was not improper. Also as applicants have canceled the claims to Group I there appears to be no basis for granting this petition.

DECISION

Applicants' renewed petition is **DENIED** for the reasons set forth above.

The application will be forwarded to the examiner for further action on the merits not inconsistent with this decision.

Any request for reconsideration of this decision or a renewed petition must be filed within TWO MONTHS of the mailing date of this decision in order to be considered timely and must be directed to the Assistant Commissioner of Patents. No extension of time will be permitted.

Should there be any questions with respect to this decision, please contact William R. Dixon, Jr., by mail addressed to: Director, Technology Center 1600, Washington, D.C. 20231, or by telephone at (703)308-3824 or by facsimile transmission at (703) 305-5408.

A handwritten signature in cursive script, appearing to read "Jasemine C. Chambers (for)".

Jasemine C. Chambers
Director, Technology Center 1600